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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 09/12/00

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☒ Responsive to communication filed on 2/28/00 ☒ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> |

Part II SUMMARY OF ACTION

1. ☒ Claims 25-40 are pending in the application.

Of the above, claims are withdrawn from consideration.

2. ☐ Claims have been cancelled.

3. ☐ Claims are allowed.

4. ☒ Claims 25, 26, 28-33 & 34 are rejected.

5. ☐ Claims are objected to.

6. ☐ Claims are subject to restriction or election requirement.

7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. ☐ Formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).

10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed has been ☐ approved; ☐ disapproved (see explanation).

12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. filed on

13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

EXAMINER'S ACTION

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Claims 14-24 have been canceled. Applicants' election without traverse of species (a) in Paper No. 15 is acknowledged.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 25, 26, 28-30 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Schreck et al. for reasons of record

Claims 25, 26, 28-30 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Masihi et al. for reasons of record

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 31-33 rejected under 35 U.S.C. 103(a) as being unpatentable over Masihi et al. for reasons of record.

Applicant's arguments filed 2/28/00 have been fully considered but they are not persuasive. Essentially, applicants argue that the cited prior art in general teaches HIV-1 infection using T-Tropic HIV-1 strains, and the prior art is silent with respect to the use of muramyl peptides for inhibiting M-Tropic HIV-1 strains of the instant invention.

The examiner contends that applicants' argument is not commensurate in scope with the claims as instantly recited. Moreover, the specification fails to mention the M-Tropic strains as argued.

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Applicants contend that it is more scientifically beneficial to find drugs that target the early stages of HIV-1 infection using the M-Tropic HIV-1 strain at an early stage of infection.

The examiner contends that applicants' statement is completely unsupported and not persuasive since treatment may be needed at any stage and any stage is worthy of study for understanding mechanism. Again, the M-Tropic HIV-1 strain has not been set forth in the specification as originally filed.

Applicants argue that Masihi et al. merely teach murabutide as an adjuvant only.

The examiner contends that a "principal ingredient" as claimed means nothing more than a most important element. Essentially, applicants argue semantics to rebut the reference teaching that which is claimed.

Applicants contend that Masihi et al. teach cell lines in which the muramyl peptides were tested for inhibition of HIV-1 are T-Tropic HIV-1 strains. Accordingly, Masihi et al. is silent with respect to the testing of these compounds in M-Tropic HIV-1 strains.

The examiner contends that the specification is also silent with respect to M-Tropic HIV-1 strains.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

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calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laurie Scheiner, whose telephone number is (703) 308-1122. Any inquiry of a general nature or relating to the status of this application should be directed to the Group 1600 receptionist whose telephone number is (703) 308-0196.

Correspondence related to this application may be submitted to Group 1600 by facsimile transmission. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). Official communications should be directed toward one of the following Group 1600 fax numbers: (703) 308-4242 or (703) 305-3014. Informal communications may be submitted directly to the Examiner through the following fax number: (703) 308-4426. Applicants are encouraged to notify the Examiner prior to the submission of such documents to facilitate their expeditious processing and entry.



Laurie Scheiner/LAS
September 7, 2000

